IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

JACQUELINE E. BANKS,   )
)
            Plaintiff,   )
)
      v.   )   CASE NO. 2:17-CV-406-WKW
)
UNITED STATES OF AMERICA,   )
)
            Defendant.   )

ORDER

Before the court is a joint stipulation of dismissal between Plaintiff Jacqueline

Banks and Defendant United States of America. (Doc. # 41.) The stipulation is

construed as a motion to dismiss under Federal Rule of Civil Procedure 41(a)(2).[1]

It is ORDERED that the motion (Doc. # 41) is GRANTED. Plaintiff's action

against the United States is therefore DISMISSED with prejudice, with costs and

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[1] The joint stipulation cites Rule 41(a)(1)(A)(ii), which provides that a "plaintiff may dismiss an action without a court order by filing . . . a stipulation of dismissal signed by all parties who have appeared." Plaintiff filed this action against two defendants, one of which was previously dismissed. (*See* Doc. # 26.) Plaintiff and the United States are thus the only parties presently in this case. One could read Rule 41(a)(1)(A)(ii) to mean that a stipulation of dismissal need only be signed by all parties who have appeared *and have not been dismissed*. But that is not what text says. Other rules specify when to ignore dismissed parties: Rule 19(b) refers to "existing parties," and Rule 25(a)(2) says "remaining parties." Rule 41(a)(1)(A)(ii) does no such thing. So the better reading of the phrase "all parties who have appeared" includes both current and former parties. *Anderson-Tully Co. v. Fed. Ins. Co.*, 347 F. App'x 171, 176 (6th Cir. 2009); *Everett v. BRP-Powertrain, GmbH & Co. KG*, 282 F. Supp. 3d 1063, 1065–66 (E.D. Wis. 2017). Because the other defendant both appeared (Doc. # 13) and did not sign the stipulation of dismissal (*see* Doc. # 41), dismissal of Plaintiff and the United States must be by motion. Fed. R. Civ. P. 41(a)(2).

fees taxed as paid. The Clerk of the Court is DIRECTED to close this case.

DONE this 28th day of January, 2019.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE